

**IN THE DRAWINGS**

Please substitute the attached Fifteen (15) formal drawing replacement sheets for the previously filed drawing sheets 1-15. Figures 2-3 and 5-6 have been amended to include proper sequence identifiers. No new matter has been added

### **REMARKS**

Applicants note that all amendments, cancellations, and additions of Claims presented herein are made without acquiescing to any of the Examiner's arguments or rejections, and solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals (PBG),<sup>1</sup> and without waiving the right to prosecute the cancelled claims (or similar claims) in the future.

In the Office Action mailed March 2, 2009, the Examiner indicated that the application was not in compliance with the sequence rules. The Applicants submit herewith a sequence listing in compliance with 37 C.F.R. 1.821(a)(1) and (a)(2). As such, the Applicants request that the objection be withdrawn. The Applicants further submit replacement Figures 2-3 and 5-6 to include proper sequence identifiers.

In the Office Action mailed March 2, 2009, the Examiner objected to Claims 3-7 as improperly stating "any of the claims" rather than "any one of claims." The Applicants have amended Claims 3-7 to state "any one of claims..." As such, the Applicants respectfully request that the objection be withdrawn.

In the Office Action mailed March 2, 2009, the Examiner issued several rejections. Each of the rejections is discussed in detail below.

#### **I. The Claims are Directed to Statutory Subject Matter**

The Examiner rejects Claims 1-7 under 35 U.S.C. 101 as allegedly being directed to non-statutory subject matter. The Applicants respectfully disagree with the rejection. However, in order to further the business interests of the Applicants, and without acquiescing to any of the Examiner's arguments or rejections, and solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals (PBG), and without waiving the right to prosecute the cancelled claims (or similar claims) in the future, the Applicants have amended Claim 1 to recite that the oligonucleotides are isolated. As such, the

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<sup>1</sup> 65 Fed. Reg. 54603 (Sept., 8, 2000).

Applicants submit that the claims are directed to statutory subject matter and respectfully request that the rejection be withdrawn.

## **II. The Claims are Supported by Written Description**

The Examiner rejects claims 1-7 under 35 U.S.C. 112, first paragraph as allegedly lacking written description. In particular, the Examiner states “Applicants were in possession of the instant genus of oligonucleotides which were found to activate IL-18 or IL12 promoters of macrophages (fig. 4 and 5) and thus have immune stimulating activity (albeit some more than others) and could be used as adjuvants.” (Office Action, pgs. 8-9). The Applicants respectfully disagree with the rejection. However, in order to further the business interests of the Applicants, and without acquiescing to any of the Examiner's arguments or rejections, and solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals (PBG), and without waiving the right to prosecute the cancelled claims (or similar claims) in the future, the Applicants have amended Claim 1 to remove the recitation of a specific activity and canceled Claims 3-5. The Applicants have added new Claims 8 and 9, which specifies that the oligonucleotide is an adjuvant. As the Examiner has indicated that the specification provides written description for such embodiments (See e.g., above), the Applicants submit that the claims are supported by written description. Accordingly, the rejection should be withdrawn.

## **III. The Claims are Enabled**

The Examiner rejects Claims 1-7 under 35 U.S.C. 112, first paragraph, as allegedly lacking enablement. In particular, the Examiner states “the specification, while being enabling for the instant oligonucleotides with generic formula SEQ ID NO:1 or SEQ ID NO:2 for use as an adjuvant and enabling for SEQ ID NO:3 for protecting normal immune cells when radiotherapy is applied....” (Office Action, pg. 10). The Applicants respectfully disagree with the rejection. As described above, amended Claim 1 does not recite a particular use of the oligonucleotides. The Applicants have added new Claim 10, which recites the oligonucleotide of SEQ ID NO:3, wherein the oligonucleotide treats atopic dermatitis or protects normal immune

cells when radiotherapy is applied. As the Examiner has indicated that such embodiments are enabled (See e.g., above), the Applicants submit that the claims are enabled. Accordingly, the rejection should be withdrawn.

#### **IV. The Claims are Definite**

The Examiner rejects Claims 1-7 under 35 U.S.C. 112, second paragraph, as allegedly indefinite. In particular, the Examiner states “how do the oligonucleotides stimulate an adjuvant?” (Office Action, pg. 14). As described above, the Applicants have removed this language from the claims and added new claim 8 which recites that the oligonucleotides act as adjuvants. As such, the Applicants submit that the claims are clear and respectfully request that the rejection be withdrawn.

The Examiner further rejects Claims 3 and 5 as allegedly indefinite. As Claims 3 and 5 have been cancelled, the rejection is moot.

The Examiner additionally states “As to claim 2, the claim recites that the oligonucleotides of claim 1 further comprise 5 nucleotides at a 5’ terminal and a 3’ terminal. However, SEQ ID NO:2 does not have 5 additional nucleotides at the 3’ terminal be only two nucleotides....” (Office Action, pg. 14). The Applicants respectfully disagree with the rejection. However, in order to further the business interests of the Applicants, and without acquiescing to any of the Examiner's arguments or rejections, and solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals (PBG), and without waiving the right to prosecute the cancelled claims (or similar claims) in the future, the Applicants have amended Claim 2 to remove the dependency on Claim 1. Thus, the Applicants submit that the claim is clear and respectfully request that the rejection be withdrawn.

**CONCLUSION**

If a telephone interview would aid in the prosecution of this application, the Examiner is encouraged to call the undersigned collect at (618) 218-6900.

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